as a ceremonial garment, it gradually came to take the place of all skin cloths. In the same way the importation of iron did away with bone and stone tools and Japanese manufacured goods replaced earthenware to the point where the method of making this ware was forgotten. Fishing gear made a particularly rapid improvement. The primitive fish net was replaced by the improved Japanese net and the materials from which these nets were made changed from bark to hemp thread while iron points were used on the fish spears. It is believed that iron imports had a great influence on harpoons which were called *Hanare* and on hooks fastened to wooden poles called *Mareppu*. As the imports of small knives, large knives (choppers—machetes), sickles, etc., grew the economy became more and more varied. Significant was the development of agriculture and the increased use of dogs. Agriculture had, previously, been carried on in a haphazard way. Only small areas were planted which yielded little and this little was considered a luxurious supplement to the hunting and fishing catch. But this changed and by the early part of the eighteenth century the area under cultivation extended from Shakotan peninsula in the west to Shiraoi in the east and agricultural products were becoming important especially in tiding the tribes over the winter.[18]

In the northwest, where agriculture was undeveloped, dogs played an important economic role. These dogs were not only used in hunting but also furnished meat and skin clothing during the winters. These people were skilled dog breeders and the Karafuto Ainu, influenced by the continental peoples, used dogs for hauling and transportation.[19] Here we have a people still in a hunting and fishing economy but developing techniques that were to prepare them for either an agricultural or a stock-raising economy. In addition to their regular livelihood, trading added to their wealth. At first they traded only the surplus of their necessities, small in quantity and limited in variety. After the infiltration of techniques from Japan the variety and quantity of their goods increased and their labor, which hitherto they had used only for the production of the necessities of life, they turned to making goods for trade. With these goods as a medium of exchange they began to accumulate wealth. They especially prized brocade, gems, and other decorations from Santan and swords, lacquer and ornaments from Japan, and the measure of wealth became the accumulation of these objects which were not only symbols of wealth but the prime medium for the purchase of fishing grounds[20] and which under the name *Ashinpe* could be made payment for crimes ——— in lieu of the death penalty

[18] Takakura Shinichirō, Ainu no nōgyō (Ainu agriculture), *Nōgyō Keizai Kenkyū* 9 (2).

[19] Mamiya Rinsō, *Kita Ezo Zusetsu* (A description of the island of Northern Ezo).

[20] Kyūdojin no densetsu oyobi jijitsu dan (Aboriginal legend and fact), *Shokumin Kōhō*, No. 42.

684 people without their noses." This cutting off the nose of an adulterer or adulteress is called *Etorasuke* [Etumesu?—to cut off the nose] and was in vogue until recently. We find then that punishment ranged from atonement made through property settlement to such corporal punishment as *Ukaru* and included such penalties as the loss of honor through loss of the hair or the nose. There were other penalties for minor offenses of which the *Watarishima Hikki* speaks, "As for thieves, the chief kept them tied in his house." In addition there were lashing and hanging the culprit by his hair from a beam. More serious offenses were punished by the removal of some part of the body as an ear or a finger and exile was also a punishment. This latter could be serious enough to endanger the life of the victim if the village were itself isolated either socially or geographically. Exile was a frequent judgment.[63] According to the *Hokkai Zuihitsu*, "If someone commits a crime he is driven away from the village."

681 There seems to be no doubt that the death penalty was assessed for crime but since, according to their religious views, death in itself was not necessarily a punishment, it was executed in a merciless manner designed to make the accused suffer as much as possible before dying. For example, the eyes could be pierced by needles and the victim buried alive[64] or the tendons of the legs cut and the criminal banished to the wastelands.[65] Death was of course the outcome of these actions but was not in itself the objective of the actions taken.

Compensation was frequently called for. It was called *Tsugunai* [*Tsugunau*—to compensate] as in Japanese or sometimes *Ashinpe*. Hayashi Kingo interprets *Tsugunai* as "compensation," "atonement," or "arbitration charge," and *Ashinpe* as a minor fine,[66] but there is really no clear distinction.

[439] Merchandise used for foreign exchange such as utensils, weapons, and swords were used for *Ashinpe*. *Ashin* is "new" and *pe* is "thing" and referred to things obtained through trade with foreigners. The scope of *Ashinpe* was very wide, it being imposed in practically all offenses. The fact that most crimes were settled by the offering of *Ashinpe* is seen in *Tōyū Ki* [Journey to the East] which says: "No matter what the crime may be if wealth is offered a life is saved from further danger," and that the other and more severe penalties were imposed only when the accused had no wealth to offer is seen in the *Ezoshima Ki*, "The guilty was never sentenced to death, instead a fine would be imposed. If unable to pay the fine his beard was pulled out and he was set free." In the *Tsugaru Kibun*: "If one has committed a crime but has no treasure to offer, his life was taken." The payment of atonement came not only

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[63] *Ibid.*, 240-241.

[64] *Kyokuboku no bessekai*, 48.

[65] *The Ainu and their folklore*, 241-242.

[66] Hayashi Kingo, Ainu no genshi shakai (Primitive society of the Ainu), *Dorumin* 14 (6).

resented another as to desire to take his life. An arbitrator would witness and, by agreement, each would beat the others, in order to dispell the resentment. Criminals are also said to have been beaten in this fashion." In criminal cases only the guilty, of course, were clubbed but in those cases when no decision could be reached as to which of the two parties was guilty they were allowed to beat each other. Thus, *Charanke* or disputation often resulted in *Ukaru* or mutual beating. *Ezo Shima Ki* describes it as follows: "When an argument developed into a fight there would be an agreement on a *Sutsuuchi*." That this mutual clubbing can be considered, as in *Ashinpe*, an expiation of crime, is seen in the *Watarishima Hikki* but most significantly in the *Igen Zokuwa* wherein it is noted: "When parties to an argument reach a peaceful settlement, the party in the wrong offers to the other *Ashinpe*, or by *Ukaru* both parties beat each other after which they resume their friendship. This was the custom of the Ezo." The *Ezo Shima Kikan* [The Wonders of Ezo] reinforces this observation: "In those cases where *Ukaru* is wanted instead of wealth, a meeting of the families of the two parties is held and the person held to commit the offense is beaten first three times with a mallet after which he beats the other party. If, after the beating, both parties are uninjured it is considered then that there was no need for atonement."

Ukaru was then not merely a punishment. This can be seen partly by the fact that both parties to the dispute beat each other and, often, came out unharmed. It can also be seen from the *Ezo Sangyō Zusetsu* [Description of the Industries of Ezo] that *Ukaru* was not only used to settle disputes but was also used in cases of unnatural death, the death of parents, epidemics and in weather rites, all of which indicates that *Ukaru* was also a method for driving off evil spirits. Since *Ukaru* settled disputes and since there were always disputes it was important for the men to be in constant training for *Ukaru*. This training took the form of sports as seen in detail in the *Ezo Dan Hikki* and the *Tōyū Zakki* and is the same ceremony which was performed, in conjunction with dances, for the Japanese inspectors. The definition of *Ukaru* given by Batchelor in his *Ainu-English-Japanese Dictionary* "a game of beating each other with clubs" was meant in this latter sense and a weakening of its use in the regulation of Ainu society is evident in that *Ukaru*, originally sacred, became a game. It should also be noted that the removal of hair and beard was far more than a symbolic punishment, for the Ainu had especial respect for their hair and believed that a part of their life force lay in it, and in addition the removal of it was no doubt a torturous thing. The settlements of disputes and the punishments inflicted on violators so far mentioned were rarely used within the village as intra-village peace was well maintained. The necessity for their use arose in intervillage quarrels where the social regulatory

power of the village was insufficient to cope with the problem. This is discussed in *Ezo Miyage* in part as follows: "A chief or a person proficient in speech would act as arbitrator, give his decision and make the parties come to a peaceful settlement, he even, at times, offering goods of his own. Therefore, up to now, disputes have never been taken to the Matsumae for trial."

4. SUMMARY

The life of the Ainu, at the time the Japanese were beginning to exert control in Hokkaidō, was not as primitive as might be assumed but was instead comparatively advanced and included division of labor. Economically the Ainu had passed the hunting and fishing stage and were moving into the agricultural or cattle-raising stage. They were engaging in foreign trade as the family became an economic unit and the communal economy of village life dissolved. In the regulatory sense the chief was a political figure and the Ainu village was no more than a body of kinsfolk evolving into a local organization. The original state of Ainu society has been assumed to be a group of a small number of families centering around the chief family, all of which originated, presumably, from a common couple. Each family was led by the head of that family while each group of families was headed by an elder who was usually the eldest member of the head family of a village unit. The Ainu lived where it was most convenient. When the number of people in a village group increased in excess of the number that could be supported by their local production the group would split up and a part or parts of it would move as a new group or groups to other parts of the country. As the geographical scope widened, the relation between the mother village and the scattered villages became less intimate and each village tended to take on more of a local color and less of that of the parent village. At the same time it became more difficult to control a village through kinsfolk relationships. It became so that a leader needed more than lineage. During this period it seems to me that the most significant event among the Ainu was their growing contact with outsiders especially trade relationships. Contact with outsiders not only introduced more highly developed methods of production but made possible the accumulation of wealth. Those superior in trade or production gradually became economically dominant and an imbalance of wealth replaced the old communal life. Those with large families, having the greatest labor supply, became the wealthiest. This was particularly true of the chiefs. It is interesting to read the following passage from the *Watarishima Hikki:*

> Once a woman becomes a servant or a mistress all the members of her family become members of the chief's family and, although it was then the duty of the chief to support them, they all worked for the chief in hunting, fishing, and gathering grass. There was no private property among families and, therefore, those with many mis-

1. The Ainu in Matsumae or in its vicinity were treated as Japanese but the number of these Ainu was very small especially when measured against the total native population of Ezo.

2. The Ezo who submitted after 1669, that is all the Ezo of Hokkaidō except those in the remote east of the Akkeshi district, were permitted self-government but were obedient to the general regulations of the Matsumae. This constituted the majority of the Ezo.

3. The Ezo of Karafuto and Chishima where Matsumae influence was weak were independent and had only trade relations with the Japanese.

These three types indicate the historical development of political control. The areas under situation 1 had been, at the time the Matsumae became independent, ruled as though they were type 2, while those in situation 3 became type 2 areas after the Kunashiri and Menashi incidents of 1789. Type 2 was the most important from an economic standpoint and the most common. Under type 2 there was no interference with the ancient customs of the Ezo; on the contrary there was an attempt to retain them as much as possible. In the *Basho* the old traditions of the Ezo were carefully observed. We have a record of a boundary dispute in 1767 between the Atsuta *Basho* controlled by the clansman Takahashi Asaemon and the Mashige *Basho* run by Shimonokuni Tadami. (The record on this was written by Kakizaki.)

> In reference to the problem of trespass in Mashige and Atsuta, a complaint was filed last year without any results obtaining. The other day Shimonokuni was summoned and told that *problems in Ezo should be settled according to the custom of the Ezo* and that boundary posts should be taken away with the assurance that no one shall be trespassing. As a result the advice was accepted and the complaint made by Asaemon was cancelled.[51]

Disputes over boundaries were settled by Ezo custom. The punishment of individuals was left in Ezo hands. In the *Ezo Fudoki* written by Sekitomo Shikei, he says: "Even when a quarrel resulted in the death of one, the judgment was left in the hands of the village chief. Unless the crime was a most serious offense the Matsumae officials did not interfere." In the *SGM* we find that, "When an Ezo broke the law 10, 15, or even 100 *Emushi* (a kind of Ezo sword) had to be paid by him, in accord with the degree of his crime, as *Tsugunai*. In other cases he was imprisoned for several days. In any case their life was spared." *Tsugunai* was the same as *Ashinpe* and one of the commonest of Ezo punishments from early times. The reason for the sparing of life lay in the absence of the death penalty in the Ezo code.[52] Those who oppose the policy taken by the Matsumae point out that they preferred not to assimilate the Ainu with the Japanese; that they forbade the Ezo to use the Japanese language; that they discouraged the Ezo from learning how to write; that they forbade the

[51] Italics are mine.
[52] See p. 21.

written in 1798, official guards were stationed in each *Basho* in east Ezo from Washiki to Mitsuishi. According to their written instructions the duties of these guards were:

1. The rescue of wrecked and drifting ships and the regulation of foreign vessels.
2. To have jurisdiction over those Ezo who violated regulations.
3. To caution the managers and watchmen against unfair treatment of the Ezo and to see that "*Kaihō*" was not neglected.
4. To attempt to increase the production of "light goods." [80]

In general, it seems that they had much the same duties as the *Uwanoriyaku*. The regulations that the Ezo were supposed to observe can be seen in an example taken from the Akkeshi district.[81]

Regulations for the Ezo. Whether it be a vessel with the mark of the sun or a vessel of some other country if it is drifting or has drifted ashore friendly aid should be given and the incident reported to the *Uwanoriyaku*.

The Ezo are also advised to live in peace with one another and to work hard to increase the output of goods. This has been conveyed to the Ezo at the time of *Omusha*.

This was the entire scope of regulation for "there is no regulation providing penalty when an Ezo kills his fellow or when he steals the property of another. Since there are no such instructions from the Matsumae or the guards there are no rules upon which to act." Thus crime among the Ezo was left for the Ezo themselves to settle. The Ezo leaders were encouraged to pay visits to the clan lord and in a letter dated June

[80] "Written Instructions for the Guards in Ezo." (Matsumae Fukuyama Shōokite) (1) Vessels flying flags with the mark of the sun as well as any other vessel found drifting should be towed into safety with the help of the Ezo. In case of a wreck all goods aboard, including ship's equipment should be carefully salvaged and handed over to the captain of the ship. The captain's name and place of birth should be reported to the castle. If the vessel is a foreign one, exercise extreme care and confiscate such goods as are contraband while, at the same time, dispatch a messenger with full details to the castle. In the event of emergency report immediately by prearranged signal fire. (2) Since an Ezo revolt occurred only last year the Ezo should be watched with extra care. Watchmen and traders in each *Basho* are to be cautioned against unreasonable conduct and also against lying. Separate notice is given in regard to *Kaihō* areas under the direct management of the Matsumae but managers, interpreters, and watchmen are to be particularly instructed not to neglect *Kaihō*. Any report of Ezo violation of the law is to be investigated immediately and the case taken under control. (3) Light goods are to be prepared for trade as usual but the Ezo are to be encouraged to increase their output. Furthermore, when an Ezo from another part of the island brings light goods with him, they should be handled by the manager and not sold to the other Ezo. Ezo leaders are to be informed of this. (4) Transactions by guards are to wait until the trade ships have loaded all their freight without mistake and have set sail. These instructions are to be followed scrupulously. Should a problem arise too difficult to settle, then instructions should be sent for.

[81] *Kimura Shikyō Hikki*.

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takes and there are many possibilities for misunderstanding when interpreters have to be constantly used. Therefore, it is urged that the Ezo learn Japanese. In that way both parties will be able to understand what the other party is saying.

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3. The reasons why the Bakufu has taken control are that the Ezo have a poor standard of living and know little of industry, so that if the fishing is bad they suffer extreme hardship. The Bakufu has great sympathy for this condition and desires to show the natives new methods of work, introduce the customs of Japan, and gradually try to change the customs and manners of the Ezo. Since the prohibition on the use of Japanese has been abolished, all persons including *Otona* and all males should be encouraged to learn and make use of this language. Officials may at times give instructions without the aid of interpreters and the Ezo should be able to respond in Japanese. This is for their own good since it will eliminate the need for interpreters. Furthermore, there are many cases of foreign vessels drifting ashore and at these times the Ezo may be called upon to render help and it would be a great handicap if each Ezo had to be individually told what to do through interpreters. In addition there is only one interpreter and not more than four or five persons among the managers and guards who understand the Ezo language for each 800 Ezo.

And again, while this area is under the Bakufu there will be many officials going and coming and it will be most inconvenient to assign each one an interpreter. So the best thing to do is to have the Ezo learn Japanese. However, learning Japanese does not mean that each one must instantly adopt Japanese clothes or cut his hair and beard as we do. The Ezo are perfectly free to dress as they have always done. It is up to the Ezo themselves whether they wish to copy the customs of the Japanese. If there is such a one and he has learned the Japanese language he shall be granted permission to become a Japanese.

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4. Children, both boys and girls, who have not yet been tattooed or made to wear earrings, are to refrain from such practices during Bakufu administration. There is no law against these practices, however; the Bakufu is just against the idea of inflicting injury on the body of any person. The reason is that those convicted of crime are tattooed according to the seriousness of their act. The second time they are convicted they are punished and the third time they are beheaded. Therefore, injuring the bodies of the innocent is not favored. As for the ban on earrings—the Japanese believe that people with large ear lobes without any marks or scars on them are happy and prosperous. We would like to see both of these practices stopped. If there are people who want to carry on their traditions let them be advised to wait until the *Basho* is handed back to the Matsumae. If those boys and girls who are to receive earrings and tattooes are restricted to those under two or three years of age, they would still be young enough even if they had to wait seven or eight years. Perhaps it will only be four or five years until the *Basho* is handed back to the Matsumae.

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It is said that the Ezo have a custom called *Tsuchiuchi* in which people are sometimes beaten to death. But the death penalty may be carried out only after legal action has been taken by the authorities. Any person beating another to death by *Tsuchiuchi* shall not only be accused and tried by Japanese authority, but no matter what his excuses he will be punished and even may be put to death. *Tsuchiuchi* is strictly forbidden under Bakufu administration. On the other hand, it is said that this *Tsuchiuchi* has been used as atonement in disputes by those who have no property to offer. Atonement and *Tsuchiuchi* have been the unwritten law. Therefore, if *Tsuchiuchi* is pro-

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hibited there may be those who will have nothing to offer in atonement and therefore will escape punishment. Since there are bound to be disputes which will not be settled unless *Tsuchiuchi*, atonement, or some form of penalty is assessed, it is advised that such disputes be brought before a magistrate and the more serious ones be transferred to Edo for severe reprimand. During the winter when no officials are stationed in the countryside the *Otona*, *Waki Otona*, and *Kozukai* shall accept complaints and report on them as soon as possible when officials arrive in the spring at which time the complaints will be reviewed and proper action taken. Naturally, certain cases will arise from misunderstandings on the part of both parties and it should be noted that, once a case has been brought up publicly and the disputants summoned to official quarters, it will not be possible to settle it secretly.

There has also been a custom of challenging a person to argue over unreasonable matters and having the loser pay atonement. From now on anyone forced into such an argument will report to the officials and receive instructions and the same goes for situations wherein anyone is challenged by an Ezo from outside the *Basho*.

A F [693]

5. There will arise the problem of how to deal with wrongdoers if the custom of *Tsugunai* is forbidden. The following should clear up any doubts on the matter. There is no written law here and all criminal matters are settled according to tradition. The Bakufu wants to educate these people and apply the Japanese pattern of life to this island. In Japan there are laws set up by authority. Murder is punished by death, adultery is punished by death, and theft is punished according to its seriousness—from beating and tattooing for a slight offense to weightier penalties for more serious offenses. There are other laws such as those which reward people, dutiful and obedient to parents, those friendly to relatives, those who are generous, benevolent, and hardworking. There are many other laws which it is impossible to illustrate and which will gradually be introduced on the island. In short, the reason for Bakufu administration is to establish various rules and laws in the hope that this island will be rid of its traditions and come to live like Japan. The *Otona* and *Kozukai* will be village officials as they are called in Japan and they will make every effort to govern their village successfully. They will encourage the people to work hard so that they will not encounter famine and the laborers must be accustomed to the ways of the mainland. This is to result in a great development of the island with the people peaceful and happy under the Bakufu. As the production of the island increases it is beyond the capacity of the Matsumae to handle the situation which is the reason central government officials have been sent to supervise. This territory will be handed back to the Matsumae when, in later years, laws have been set up and the traditions and customs have been altered to match those of Japan.

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6. Though it has been said that this land belongs to the Matsumae it must be remembered that all land in Japan belongs to the Bakufu including the Matsumae territory itself. The fact is that this island was so far away from Edo that it was merely given in trust to the Matsumae. Now recognizing the lack of government, the Bakufu is administrating directly, developing this country and initiating laws and rules similar to those of Japan. It will teach agriculture to the people, encourage them to be diligent so they may be self-sufficient, reward people according to their work, and introduce the Japanese language and Japanese-style houses, and educate the people. Therefore, even after this land is given back to the trust of the Matsumae those rules and laws established by the government must be observed and not even the Matsumae may change the standards set up.

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each *Basho*. Sometimes they were held as an annual event at the beginning of the year following the traditional custom of *Omusha* and sometimes on such occasions as the arrival of officials on tours of inspection.

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The *Omusha* was the most important of the annual events. It has been discussed in Part Two, Chap. IV, Sect. 1. Beginning as a ceremony of primarily economic significance, it became an occasion for the Matsumae to give presents and at the same time issue regulations and it became an integral part of the government of natives. In this period it became even more important. It was held annually in August and its intent was, as in the case of *Ekkenrei*, to win the respect of the Ezo. At the *Omusha* the officials, in a dignified manner, talked to the Ezo and gave them abundant gifts. During this occasion a number of other matters were taken care of: (1) The appointment and dismissal of Ezo with titles (*Go Ezo*). (2) The awarding of special wages and gifts to Ezo with titles. (3) The rewarding of dutiful sons and daughters and those people of good conduct. (4) The presentation of gifts to widowers, persons without families or relatives and to the old. (5) The reading of laws and regulations. The Ezo were then treated to food and sake by the *Kaishō* and the *Unjōya*. The laws differed according to the *Basho* but they are set down in greater detail than the regulations of previous periods and they covered not only public but private affairs which the authorities considered ought to be regulated. The law of the Etorofu *Basho* is quoted below.

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1. Laws previously promulgated shall be strictly observed.

2. The Shogunate shall be respected; parents will be treated with care and husband and wife and brother and sister shall live in peace. Honesty shall come first in all matters.

3. All shall live on good terms without quarrels, fights, or other disputes. It is absolutely forbidden to scheme to obtain compensation. (*Tsugunai.*) Supplement: Anyone spreading false rumors is to be taken to the *Kaishō*. No arguments, quarrels, or other unfavorable incidents have been reported in the past and it is to be hoped that such strict control will be maintained. Anyone who does not willingly observe the regulations will be reported. Have nothing to do with those who violate the law but report them to the manager for judgment.

A ●[68]

4. It is unlawful for persons to gather in large numbers to discuss unrighteous matters, regardless of their nature. This is absolutely forbidden. Anyone who without delay reports those with evil intentions shall be rewarded with gifts and his offense pardoned if he was a conspirator.

5. Persons arriving from abroad or from islands further away than Uruppu are not to be permitted to land but are to be ordered back. Such incidents are to be reported to the *Kaishō* whether by day or by night.

6. Needless to say, a report is to be made immediately if a Russian vessel is sighted and each person is then to report to the *Kaishō* with his bow and arrows.

Supplement: In the event of a foreign invasion all males between fifteen and sixty will at once leave their tasks to the women and the old and report with their weapons to

Japanese language was cancelled and its use was encouraged. Bad traditions were discouraged and moral instruction was given along with reading and writing while a sort of military training, for use in emergencies, was conducted.[23] Among the customs the Bakufu tried to abolish were polygamy and *Tsugunai*. Most of the Ezo with any social standing kept mistresses, some as many as ten or more and this created a situation where poor boys, when they matured, were unable to get a wife. The Bakufu did everything possible to discourage polygamy while, at the same time, encouraging monogamy. *Tsugunai*, the ancient practice of disputation in which the loser forfeited his worldly goods had been turned, by the greedy, into a sort of survival of the fittest. Attempts had been made to abolish it in the pre-Bakufu period and the Bakufu, in turn, tried vigorously to stamp it out.[24] The Bakufu also taught the Ezo to be obedient to parents, to live in harmony with one's relatives, to be honest at all times, and not to argue or quarrel, and the Bakufu officials themselves tried to set the examples which they taught.

Education instructions in these matters and commendation for success achieved usually took place at *Omusha* in order that the awards receive as much public attention as possible to stimulate the others. For example, an Ezo of Kunashiri named Hero was given permission to sit beside the chief on *Omusha* day and he was then awarded a suit of clothes because the report of the officials showed that he was a dutiful son.[25] Furthermore, awards surpassing the mere giving of gifts were available at times other than *Omusha*. An interesting example is that of Ezo Apepana of Uenbetsu.

The official Inoue Tatsunosuke of Nemuro had noticed that Apepana, despite his youth, was a hard-working man and he tried to get him to go to Nemuro *Kaishō* to work. Apepana refused on the grounds that he was obliged to support his family. Inoue was so struck with this sense of duty that he remarked, "Mere goods were not enough to praise his devotion to his parents." and he had the entire family of Apepana

[23] That the Bakufu attempted to make use of the natives in time of emergency can be seen in the report of an *Omusha* from Etorofu. It instructs young men to assemble at the post bearing their own weapons when Russian vessels are sighted. In Karafuto the Ezo were assembled and given bows and arrows and rifles as well as military instruction while the guards were given such assignments as mobilizing the natives, watching out for fire hazards, patrolling Ezo dwellings and preparing food.

[24] An example of the abuse of *Tsugunai* is found in the *Higashi Ezo Nikki*. It states that when a servant of chief Sakana of Abuta fell to his death in a waterfall near Subetsu, the chief claimed that, "My servant's death is due to the existence of such a waterfall in Usu *Basho*. The waterfall, therefore, shall be given to me as compensation" and he won his argument. The *Kamikawa Kenbun Kidan* [Strange stories and observations about Kamikawa] states that a native wishing to obtain a treasured bowl owned by another conspired with his wife to accuse the other of adultery and achieved his purpose. It is believed that in this period such cases were not infrequent.

[25] *Hokkaidō Shi* 15.

did enshrine Yoshitsune at Saru which was alleged to have been the capital of the Ezo and the success he achieved is unknown since the Ezo were animists and not idolators but his intention is understandable. Kondō also set up shrines at Kunashiri, Akkeshi, and other places, and taught the natives to worship at them.[48]

6. LAW

Another noteworthy matter of policy was the enactment of simple laws in Ezo. The Matsumae had regarded the Ezo as aliens yet to be assimilated and consequently all internal affairs of the natives were left to the natives to settle except incidents involving Japanese. When the Bakufu took the view that the Ezo were part of Japan, it became necessary to enact some kind of law in the island. Since the Ezo were not accustomed to Japanese ways, it was considered unfair as well as a hindrance to government to enforce the laws and penalties of the mainland. Therefore, Hayashi of the Education Ministry, acting on the three articles of the pledge of the Founder of the Han Dynasty made to the leaders of Shensi, drafted three articles for enactment into law in Ezo.

1. Heavy penalties will be imposed on persons believing in perverted religions and persons becoming friendly with foreigners.
2. The death penalty will be imposed on those who commit murder.
3. Persons who do injury to others or who commit theft shall be punished according to the seriousness of the crime.

According to Hayashi's explanations of the draft, light crimes were to be punished by a maximum sentence of three to five years at hard labor on the roads with the culprit to be shaven bald, while the penalty for misdemeanors was to be left in the hands of the administrative courts.[49] In addition to the above three clauses

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can be seen from a letter he wrote to Furukawa Koshōken in June 1799:

"Millet is called *monjiro* and barnyard grass is called *biyaba*. It is said that when Minamoto no Yoshitsune came to this land years ago, he taught the natives how to plant them. At Saru and Mukawa the natives have set up wreaths at places where Yoshitsune is said to have resided." *Kondō Seisai Zenshu* 1: 22. The *Kimura Shikyō* . . . also states that this legend was believed without doubt.

[48] It is noted in the *Kimura Shikyō* . . . that on July 23 Kondō Juzo and his party set up a small shelter at Atoiya in Kunashiri and erected in its vicinity a Hangan shrine [a shrine to Minamoto Yoshitsune] and instructed the natives as follows: "A Hangan shrine has been established here and it is requested that the shrine be worshipped."

On October 10 the natives, on the occasion of the enthronement of a god at Akkeshi received the following instructions: "To worship this god is to worship the god of Edo and it is as holy a god as the god of the sun and the moon. This god bestows good luck on the virtuous and bad luck on the evil; is pleased by those who work hard but despises those who are lazy. This god protects Ezo and its surrounding sea so it is desired that this god be worshipped at all times without fail" [also given in Ainu].

[49] "If too many strict laws are enacted in an uncivilized land, it is true that these laws will act as obstacles in ruling the

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the formation of groups was prohibited and one who informed the authorities of such illegal societies was to be exculpated from his own offenses including even membership in such a group. The Ezo were instructed that on the occasion of *Omusha* they should present to the managers any disputes which they were unable to settle among themselves.[50] It is a very difficult thing to enact legislation for people of a different race, language, customs, and cultural standards, for if the law is not brought into line with their habits, it can exist only nominally and, if the law is forced on these people, they will rebel and the result will be contrary to the original purpose of the laws.

Hayashi's three brief and simple laws were an attempt to avoid conflict with native custom. However, it is doubtful that these laws were fully carried out among the Ezo. While the Ezo chiefs were gradually losing their power to the Japanese, they still had great authority in their own villages and they were the law, and control of the Ezo still lay in the hands of their chiefs. Furthermore, the Bakufu was exceedingly careful not to arouse antagonism by destroying through law any ancient customs and it intended to work through the chiefs rather than to snatch their power from them. The death penalty in article two presented an awkward problem since the imposition of a penalty of death was distasteful to the Ezo.

natives. However, without any laws there would be no way to punish violent conduct and those in the wrong. It is, therefore, proposed that the Three Articles of Law enacted by the founder of the Han Dynasty upon his arrival in Shensi when he overthrew the despotic rule of Ch'in be adopted and that an additional article be added prohibiting perverted religion since Ezo is contiguous to Russian territory. These articles conform with the laws of Japan and will prevent any wrongdoing in the future. Furthermore, they are based on authority which fact will, no doubt, satisfy all parties concerned in the matter. The three articles mentioned are actually two articles which deal with three different matters and they state: 'The death penalty shall be invoked for murder'; 'Persons inflicting injury on others and persons committing robbery shall be punished'; and 'The infliction of injuries on others may be due to various reasons, some good and others bad. Degrees of robbery also vary. Therefore, a fixed punishment cannot be set beforehand. When a person has committed either one of these three things, he has violated the law but the extent to which he shall be punished must be decided after the fact.' Considering the possibility of adapting to present-day use some of the olden punishments, we find that for those who committed serious crimes, there were such penalties as cutting off the hair and hulling rice by mortar and pestle; that is, the guilty paid for their crime by manual labor. These penalties are no longer in existence but it would be an excellent idea, in my opinion, to set a certain length of time, say three or five years, as punishment for persons who inflict injuries on others or who commit robbery. During that period the convicts shall have their heads shaved and will be put to hard work constructing roads or cultivating land in order to pay for their crimes. They are to be set free when they have served their time. Other misdemeanors not covered by this law may be punished in the same manner with the length of sentence running from six months to one year." *Kyuuiei Kōki*, Suppl. 1. *SHS* 5: 568–569.

[50] Refer to Etorofu Omusha moshiwatashi no koto (Instructions on *Omusha* at Etorofu).

2: Batchelor M-5 (1877-1924) 1927
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asserted that they traded with the races living in Eastern Siberia, and with the Kurile and Aleutian Islands and with Kamschatka. They also did much trade by barter with Matsumai. Chief Penri informed me that his ancestors traded with Manchuria. As proof of this he showed me a string of Manchurian cash, the brass bowl of a tobacco pipe, and some brass rings with which the Saghalien Ainu women decorated their belts.

The Ainu community had various methods of punishing offenders, which were regulated by the different misdemeanours committed and the dispositions of the judges and people. They never appear to have favoured the death penalty, since they considered death no punishment at all. Infliction of pain or disgrace only did they consider worthy of the name of punishment, and the more severe the pain the greater the punishment. Tying up with cords and beating was the most common method of punishing offenders, though this was superadded to other kinds in some cases. The mad were sometimes treated in this way.

For breaking into a granary a very sound beating was administered for the first offence, and this was a great disgrace. For the second, sometimes the tip of the nose or the lobes of the ears were cut off and the offender was driven out of the village and boycotted. For breaking the seventh commandment, it used to be the custom to impose fines, or to tie up the hands of the male offender behind his back and then hang him up by the hair of his head with his toes just touching the ground, and give him a whipping. The female was generally allowed to go free in disgrace, though sometimes she came in for a flogging. Single people were generally made to marry.

For murder it was customary to cut the tendons of the feet, thus maiming the culprit for life. The tendons were severed close to the heels. This was a

2: Batchelor M-5 (1877-1924)1927
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terrible punishment, for a person thus treated could not possibly do any work or go hunting. He was a burden both to himself and his friends. Many years ago I saw one man who had been thus treated and he had to crawl about on his hands and knees. I have heard also of the very incorrigible being banished to a place they called "The land without trees and birds," which I believe means Siberia. 687

There were also several kinds of ordeal which were applied as punishments on occasion. Thus, 681

(1). *Hot water.* A very large cauldron, such as the Japanese use for boiling fish when they desire to extract the oil, was procured. This was filled with cold water and placed over a big fire. When fairly warm, the victim was popped into it. Here he had to remain till he confessed his crime or till the people thought he had been punished enough.

(2). Another method was to heat water up to boiling point and then make a suspected person thrust his arm into it quickly. If afraid to undergo this test, his guilt was said to be proven. If, however, he thrust his arm into it and received no harm, he was said to be innocent.

(3). *The hot stone.* Sometimes a stone was heated well and the criminal was asked to hold it in the palm of his hand. If he refused, he was considered to be guilty, or, if he took the hot stone and got no harm from it, his innocence was fully established.

(4). *Water drinking.* I was also told that a suspected person or criminal was sometimes made to sit down before a big bowl of cold water and remain there till he had swallowed the whole of it. Indeed, Penri told me that sometimes the man was made to keep his mouth to the bowl till the water was all gone. I should think this would be a particularly severe punishment to some Ainu, for they do not like to drink water, as they are so very fond of whisky. 681 272 273

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●681 (5). *Throwing the cup.* This consisted in causing a person to drink a cup of water. When this was done, he was made to throw the cup behind him, over his head. If it lighted the right way up, the innocence of the individual was supposed to be established; if otherwise, he was proved guilty.

(6). *The tobacco ordeal.* A favourite way of trying women and girls was to make them smoke several pipes of tobacco, and, having knocked the ashes out of the pipe into a cup of water, compel them to drink it. Those who could smoke the prescribed amount of tobacco and drink the ashes without feeling ill were pronounced innocent; those who could not do so were said to be guilty.

(7). *The stake.* This punishment and ordeal consisted in tying a person to two stakes driven into the earth. The arms were stretched out to their full extent and tied to the stakes. Next, the legs were treated in the same manner. Anyone tied up in this way had to remain there till he either made a complete confession or had received sufficient punishment.

Beating with a thorn bush was also one way of inflicting punishment. When applied to the naked back, it sometimes caused such sores that it took a very long time to heal them. My informant told me [762] that, rather than undergo some of these ordeals and punishments, people had been known to commit suicide. These were all ancient methods which are now seldom practised, and when indulged in, it is always in secret, and among private friends and relations.

627 In olden times the Ainu often used to settle their differences by open discussion at recognized places [184] rather than by an appeal to arms. And I am given to understand that this custom used also to prevail farther north. Yet these people have been called "savages"! When a case was to be heard, the chiefs and elders of the people, men and women, too, would

2: Batchelor M-5 (1877-1924)1927
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meet at the appointed place on a given day, the younger folk also being allowed to be present. The disputants would carry on a wordy conflict through their selected representatives, lasting for days on end sometimes, if the cases required it, and the question as to which side had won would be decided by the vote of all the elders assembled. Many local differences were settled in this way, though the tribal quarrels were more difficult and arms were at times resorted to or night raids made. The assembly also determined what fines, if any, were to be imposed. This plan suited the people well and they abode faithfully by the decisions arrived at. The fines usually consisted of the skins of animals, dried fish, beautiful seal-skin garments or heirlooms.

It should be understood that the Ainu settlements were mostly along the rivers. Those dwelling near the river banks in any district would lay claim to these as their own peculiar property in which to fish, and to the surrounding mountains and plains as their personal hunting domains, thus making certain territories their own private property, in which none but the owners had any right to hunt or fish. Transgression of these unwritten but well understood fishing and hunting rules meant tribal discord and intertribal quarrels. When these could not be easily settled between the villages where the poaching had taken place, the people were called together and the matter was openly considered and adjusted. In the special instances I have now in view, the "Stone of Contention" was the place chosen, and the cases were carried on in a dignified manner with all due religious and ceremonial rites and respect.

I once knew a very affable and courteous Ainu whose name meant "Mouth of Peace." For short I here call him Mr. Mo, the first syllable of his name, which means "Peace." He was quite a well-to-do man, for at the time I first knew him he had in his posses-

3: Hitchcock N-5 (1888) 1891 AB6 Ainu AB6

The height of the monuments varies from 3 to 6 feet, and depends upon the age and position of deceased. Monuments for women are plain posts, not so high as those accorded to men.

Mourning customs vary greatly in different parts of the island. The period of mourning may last three days, or as many years. This is a subject concerning which little seems to be known. Formerly it was the custom to burn the houses of the dead, but this is no longer done in Yezo.

PUNISHMENTS.

In the museum at Sapporo there is a collection of clubs, carved in rough relief, which the Ainos use in punishing wrong-doers. Their punishments are severe, but they do not take life, even for the crime of murder. The murderer is bound to a cross for a week, and, after his release, receives some good advice from the judge, when he again takes his place as an honorable citizen.

The clubs are used for punishing thefts and other crimes. The prisoner is stripped to the waist, and heavy blows are delivered upon the bare back. The Ainos also have certain trials to prove the innocence or guilt of the accused person, such as the trial by hot water, in which a stone must be picked from the bottom of a kettle of boiling water, and the trial by a heated iron, which is supposed not to burn the flesh of one wrongly accused. Mr. Batchelor states that a murderer has his nose and ears cut off, or the tendons of the feet severed. These cruel punishments are undoubtedly old practices no longer in vogue, although one can not speak very confidently as to the cause of their discontinuance, unless it be due to Japanese control. H. von Siebold has supposed, from these old customs that the Ainos were once a savage and warlike people. They may have been so, as one might infer from Japanese tradition, but it seems to me unsafe to make the assumption on the grounds suggested by Von Siebold. Their present character does not sustain it in any way. Sympathy, regard for physical suffering of others, are not early developments in human character. Lingering traces of savage heartlessness and cruelty are still recognized in the practices of our own children.

HUNTING AND FISHING.

Wild animals, as bears, deer, foxes, and many others, abound in the Yezo forests, while the sea yields an abundance of fish of an excellent quality. The Ainos are brave hunters, and they are largely dependent on the chase for their animal food and winter clothing. Their hunting implements, however, are of the rudest description. The bears of Yezo, which are the same as the brown or grizzly bear of North America, are large and dangerous. At certain seasons they do not hesitate to attack man, even entering the dwellings in search of food. These fe-

4: Landor T-5 (ca. 1890) 1893 AB6 Ainu AB6

brains in bettering their miserable condition and filthy mode of living. They would have striven to make the beginnings of a history and a literature, or at least to have devised or adopted some mode of writing with which they could preserve these high ideas, and pass them on from generation to generation. Even their language is so poor in words as to hardly express their everyday wants. The Ainu are low in the scale of humanity. They have always been low; they have not sunk, for they have never risen. They have never done any harm in this world, and they will never do any good.

The Ainu are without laws, which, paradoxical as it sounds, to a great extent makes them good. People are never so good as when no harm can be done. There are indeed few crimes among them; no voluntary infanticides; very very rarely murders; no suicides; little theft, and as little treachery among people of the same tribe. Though usually retiring and reserved, they are hospitable on special occasions, and generous with what little they possess. The young show an instinctive reverence for the aged, without considering it a virtue or a duty. Cowardice is despised by the Ainu, but courage, endurance of pain, and hardship, drunkenness, and similar qualities, are looked on as the chief virtues in men. Punishments are seldom inflicted by Ainu on any of their tribesmen, and the crime must indeed be great to raise the whole community against the criminal. If by rare chance some great evil has been done, the chief of the village and all the men assemble, and decide on the punishment to be inflicted. Flogging is the general punishment for the lesser crimes, which, according to Ainu ideas, are theft and assault. The murder of a tribesman is sometimes punished by cutting the tendons of the hands and feet of the murderer, thus disabling him from hunting or fishing. If, however, the man murdered was of another tribe, or a Japanese, this Draconian kind of justice is not administered. Quarrels among tribesmen are settled by private retribution, and no one interferes either one way or the other. These quarrels, however, very seldom occur, as the Ainu are naturally a peaceful people. Imprisonment does not exist, for the simple reason that the Ainu have no prisons. They do not know what a prison is; neither is capital punishment practised by them. According to their own ideas they are not cruel to children, for we

681 [576] [689] The payment of atonement came not only after a violation of the law but also after a violation of manners and customs such as sitting down without regard to custom,[67] looking into a house through "God's window,"[68] speaking the name of the dead,[69] talking about the secrets of other people, looking at unclean things,[70] or disturbing a sacred place.[71] *Ashinpe* was therefore not a mere fine but a gift used to beg pardon of God for in the very presenting of the gift was implicit an apology to God. When disputes were settled among persons there was no question about the distribution of *Ashinpe*. But if the chief had acted as judge [622] [692] he collected the *Ashinpe* and distributed it to the injured party. This is described in Sakai Tadaiku's *Hokkaidō Junkōki* [Record of a Tour of Hokkaidō] as follows: "When a person did wrong, he was reprimanded and made to atone after which he was set free. The disposition of this atonement was the duty of the *Otona*." in the *HDHS* it is said that "the chief after passing judgment would collect from the guilty party wealth in accordance to the offense and give it to the injured party." The *Tsugaru Kibun* notes: "When an offense has been committed through error, the chief of the village would examine the case and impose a fine on the party to blame and present this to the other party." It is evident that those in power could abuse this custom and acquire wealth by challenging others to a *Charanke* over a trifle.

681 578 627 Another important method of settling disputes was a duel with clubs. This was the *Ukaru*, *U* meaning "mutually" and *Karu* meaning "to beat," the whole word literally being taken as to beat each other with clubs. The clubs were called *Shuto*. This custom was called *Shutouchi* in Japan and the term became corrupted to *Suzuuchi*, *Sutsuuchi*, and *Tsuchiuchi*. *Shutouchi* along with *Tsugunai* was an important method of settling disputes. The *Waterishima Hikki* notes: "When a matter was arbitrated between two individuals *Tsugunai* was offered and if it was refused the one was beaten on the hip by the other with a club until he bled and apologized. This is called *Ukaru*." The *Hokkai Zuihitsu* states: "This was used when one so

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[67] *Tōkai Yowa*.

[68] Chiri Yukie trans., *Ainu Shinyō Shū* (Ainu psalms), 116–117, fn. ['God's window' was opposite the entrance and back of the altar in an Ainu house. Sacred and covered with a screen, it was a sacrilege to peep through this window through which the bear was carried into the huntsman's house.]

[69] "Without knowing that his parents and family were dead I asked him how they were whereupon tears came flowing from his eyes and greatly enraged he demanded atonement." *Watarishima Hikki*.

[70] "It is said to be the law of this country that *Tsugunai* had to be paid if one saw the vagina." *Tōi Shuran* (Observations of Eastern Ezo), vol. 2 of *Ichisatusawa* (Conversations about the land of the barbarians).

[71] "They did not do any thing rude facing the sea. Therefore, if an Ezo found another urinating toward the sea he would immediately demand *Tsugunai*." *Ibid.* "A person urinated upon the grave of an Ezo's father. The Ezo was furious but the argument was settled by presenting *Tsugunai*." *Tōyū Ki*.

SOCIAL ORGANIZATION

This is made to Nusa-koro Kamui, the Kamui of the chaff-thrown *nusa*, where, in olden times, it was customary to bury important elders. On this occasion, Nusa-koro Kamui is addressed as Kotan Koresu Kamui Ekashi (Ancestor Kamui who Rears the Kotan). Further evidence is seen in the title Iworo-koro Kamui (see above, p. 152). It is suggested that the bear, eagle owl, sky, and the chaff-thrown *kamui* (all, it should be noted, *pase kamui*) are each, in certain localities, connected with the *kotan* or the *iwor* (see below), territories occupied by patrilineages, and so associated with the ancestral cult.

Kotan chieftainship has broken down. Where it still exists, succession follows the old custom and is patrilineal. The chief was called *Sapane guru* and the office passed to the eldest son. Munro was told that in the old days a bad chief might be put to death. Mr Seiichi Izumi states (*Journal of Japanese Ethnology*, 1951) that since the 1890s when the Ainu lost their territorial rights to hunting and fishing grounds, the strong territorial group life has disintegrated. Previously, the chief presided over the patrilineal family groups—the *ekashi-ikir*—of the locality. In text fig. 8 Munro shows diagrammatically how the local groups were arranged with regard to their hunting rights on the hills and fishing rights in the rivers and on the sea coast. Hunting by means of a spring bow (*kuari*) was a collective activity limited by village rights. Persons not belonging to these groups could not become members of the *kotan* unless they were adopted by a local *ekashi-ikir* and given its badge (*itokpa*), for which a valuable gift would be accepted. Within the territory (*iwor*) of the *kotan* each family had certain exclusive rights which were transmitted from father to eldest son. These were specified hunting rights, fishing rights in rivers and on the coast, and the right to collect the herb from which aconite poison is extracted. No one was allowed to enter the *iwor* of another *kotan* without permission.

Mr Watanabe states that after the Ainu were given plots of land for cultivation in 1885 the *iwor* organization began to disintegrate, but in his recent researches in the Topachi district (1957) he found the largest territorial group to be the *ekashi-ikir*, each of which was associated with its type of *itokpa*. Thus he confirms Munro's somewhat obscure statement that the eagle owl might be 'a deity particular to certain Ainu', and, further, he indicates that the bear deity is associated with the *ekashi-ikir*.